

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**UNITED WATER NEW YORK¹
Employer**

- and -

Case No. 2-RC-22963

**LOCAL 363, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO, CLC
Petitioner**

DECISION AND DIRECTION OF ELECTION

United Water New York ("the Employer") is engaged in the business of providing water to residential and commercial customers throughout the Rockland County area of New York State. Local 363, the International Brotherhood of Electrical Workers, AFL-CIO, CLC ("Petitioner") filed a petition among all SCADA² employees as a residual unit, seeking to add these employees to a unit already covered by a collective-bargaining agreement between the Employer and Petitioner, which is effective by its terms from September 1, 2003, through October 29, 2007. The above-referenced contractual unit, which was certified by the Board in Case No. 2-RC-14838, encompasses all of the Employer's employees, including inspectors, special inspectors, field investigators, water waste inspectors, meter service and repairmen, maintenance men, special service and maintenance men, pump operators, laborers, bookkeepers, yardmen, systems operations clerks, commercial investigators, meter readers, typist-clerks, senior clerks, and teller-counter clerks, but excluding executives, professionals, confidential employees, and guards and supervisors as defined by the Act. It appears that in about 1984, the Employer created SCADA positions, but has refused to recognize the Union with respect to these employees.

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Based upon the entire record in this matter³ and in accordance with the discussion above, I conclude and find as follows:

¹ The name of the Employer was corrected at the outset of the hearing.

² SCADA stands for Supervisory Control and Data Acquisition.

³ The briefs filed by the parties have been duly considered.

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I find that the Employer, whose parent company is incorporated in New Jersey, with an office and place of business located at 360 West Nyack Road, West Nyack, NY, is engaged in the business of providing water to residential and commercial customers throughout the Rockland County area. Annually, in the course and conduct of its business operations, the Employer derives gross revenues in excess of \$250,000, and purchases goods and supplies valued in excess of \$50,000, directly from points outside the State of New York.

Accordingly, based upon the stipulation of the parties, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Petitioner, Local 363, International Brotherhood of Electrical Workers, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

5. Petitioner seeks an election among SCADA employees as a residual unit to determine whether they desire to be included in the unit of all employees of the Employer already covered by the certification in Case No. 2-RC-14838, but would exclude the two SCADA team leaders as supervisors under the Act. The Employer contends that the petition should be dismissed because both the SCADA team leaders and operators are supervisors under the Act.

The issue presented herein is whether the six SCADA employees⁴ are supervisors within the meaning of Section 2(11) of the Act because they exercise independent discretion in assigning and directing field employees, as set forth in the Supreme Court's decision in *NLRB v. Kentucky River Community Care*, 532, U.S. 706 (2001), and its progeny. Even though the Union conceded that the two SCADA team leaders are supervisory, the Employer refused to stipulate to their status as such and takes the position that all six SCADA employees are supervisors because their job duties are "too similar to so distinguish the positions." I have considered the evidence and the arguments presented by the parties on this issue. For the reasons set forth more fully below, I find that the SCADA team leaders and operators are non-supervisory and are eligible to vote for inclusion in the certified unit. To provide a context for my discussion, I will first provide an overview of the Employer's operations. Then, I will present the facts and reasoning that supports my conclusions on this issue.

I. RELEVANT FACTUAL BACKGROUND

A. Employer Operations

⁴ Presently, one of the SCADA positions is vacant. The Employer intends to operate this department with four SCADA operators and two team leaders.

The corporate office located at 360 West Nyack Road in West Nyack, NY, provides water to more than 250,000 people in the Rockland area. The Union represents about sixty employees at this location, which is comprised of several departments: customer service, meter changing, meter reading, pumping, distribution and construction. SCADA ("Supervisory Control and Data Acquisition") is a computerized system that collects data regarding, among other things, tank levels and the flow and pressure of the water. The employees in the SCADA office monitor the data and analyze various text alarms to determine whether an alarm represents an instrumentation issue (false alarm) or whether an actual, physical problem has occurred at one of the Employer's wells, the treatment plant or the pumping station.

SCADA currently consists of five employees. Walter Bogushefsky and Jeff Van Wagenen, the two most senior employees, are team leaders. Robert Keller, Patrick Tuohy and Michael Joosten have the title "supervisor-system operations" and are referred to herein as SCADA operators.⁵ The operators report to the team leaders, who in turn, report to Vito Spadavecchia, the manager of operations in charge of the pumping department, the distribution department and SCADA. Spadavecchia reports to Michael Pointing, the vice-president and general manager. The SCADA operators provide 24-hour coverage, seven days per week; whereas, the team leaders, Spadavecchia and Pointing work normal business hours, Monday through Friday, 8:00 am to 4:30 pm.

B. SCADA Job Duties

The major responsibility of the SCADA office is to supervise, control and monitor the regulation of the water supply and its distribution in the system. Based on tank levels, SCADA employees make technical decisions, such as whether to start or stop wells, move water between districts, open or close a regulator, or increase production at the treatment plant. These tasks are accomplished through a series of commands inputted into the computer, which are set forth in the SCADA operations manual. The cost of water production is a major factor in managing the system and therefore, SCADA's determination to use a particular well is based largely on whether its utilization is less expensive. In that regard, the manual lists the relative operating costs of every well in each district. With respect to SCADA's oversight of the treatment plant, the operating manual sets forth all of the testing and sampling procedures used by the treatment plant operators to monitor water quality.

No field employees report directly to SCADA operators or team leaders. Walter Bogushefsky, a team leader who has worked in SCADA for 21 years, testified in general terms that SCADA operators direct the work of employees in the pumping, distribution and construction departments. Typically, SCADA operators interface with a pumping department employee about two to four times per day; a distribution department employee about two or three times a week; and a construction crew only rarely and in emergency situations. Each department has defined jobs so that SCADA operators are not required to use any discretion in determining whether to reach out to a pumping department employee or a distribution department employee.

⁵ Joosten was hired in 2000. Tuohy started in 2002 and Keller was recently hired in October 2004.

Bogushefsky testified regarding a normal work day in the SCADA office and his various interactions with field employees. For example, when a power alarm flashes on the SCADA computer screen, Bogushefsky calls the pumping department employee, who has been pre-selected by the pumping department supervisor Christopher Berke, and asks him to verify that a power failure has occurred.⁶

As another instance, a "low temperature" alarm requires the SCADA operator to interpret the data and consider a number of possible responses. Bogushefsky explained that a low temperature alarm on a warm day would likely indicate an instrumentation malfunction and therefore, he may take no action other than to schedule routine maintenance for the following day. If, however, the low temperature alarm occurs on a cold winter day, Bogushefsky would immediately contact a field employee to investigate if the alarm is broken or if the heat is off. Thus, the SCADA operator has discretion to determine when an immediate response is appropriate or if the matter can wait until the next day. They do not, however, select a specific field employee based on an assessment of the employee's ability or skill. The pumping department employees generally work alone in the field. In the unusual circumstance that a job requires more than one employee, Bogushefsky contacts Berke and Berke determines which other employee should be assigned this job.

Similarly, Bogushefsky contacts the distribution department supervisor, who relays the name of the designated employee, to respond to a sump alarm which is triggered when the water level is too high usually after a heavy rain. Bogushefsky contacts the customer service bureau (CSB) with the name of the designated distribution employee and CSB contacts that employee to investigate the sump problem.

With respect to the treatment plants, the SCADA computer system monitors chemical levels, but the employees at the treatment plant also have access to the same information. Accordingly, Bogushefsky's first assumption is that the treatment plant employees are attending to the problem. If, however, the problem persists, he calls the treatment plant and asks the plant employee to correct the chemical levels. The protocol for adjusting chemical levels is set forth in the treatment plant operating manual in a detailed and extensive fashion.

Bogushefsky also described exceptional situations that may occur after normal working hours, such as a water main break. Bogushefsky determines whether a distribution inspector is required based on consideration of several factors, such as the time of year, the time of day, how much water is leaking and any other information bearing on the nature of the reported leakage. Bogushefsky may decide that an on-site assessment is necessary. In that case, he instructs the customer service dispatcher to call the distribution inspector. Further, Bogushefsky may decide that an emergency supervisor is necessary to inspect the area and determine if the repairs must be undertaken immediately. If the main break requires immediate attention, Bogushefsky tells the dispatcher to call out a construction crew. The manual provides uniform procedures and guidelines for the operating personnel to properly disinfect any main installations prior to being placed back in service. If several emergencies occur simultaneously, Bogushefsky and the emergency supervisor both decide the appropriate order of response.

⁶ While Berke corroborated that he chooses which pumping department employee will be available to take field calls from SCADA, no testimony was elicited regarding the criteria that he uses to select the employee.

Perhaps more significantly, if a problem occurs in the pumping department after normal business hours, Bogushefsky decides if the pumping department employee should work overtime and that expense is attributed to the pumping department budget. With regard to the selection process, Bogushefsky calls the pumping department employee who is on-call for a one-week period on a rotating basis during the summertime.⁷ During the winter months, Bogushefsky calls whoever is available and makes an attempt to equalize the overtime. As a practical matter, however, overtime occurs maybe once during the entire winter season.

Another unusual situation may occur when a well stops pumping. In such a circumstance, Bogushefsky dispatches an on-site supervisor to inspect the well and also determines whether to start another well to replace that one. In the event that the pump is broken, Bogushefsky creates a job order to have it fixed because the repair is mandatory. Further, where subcontractors are necessary to repair electrical, instrumentation and radio communication issues, Bogushefsky decides whether to authorize repairs for any work up to \$2,500, signs off on the invoice and submits the invoice to procurement⁸. For repair work that is more costly or optional, operations manager Vito Spadavecchia makes the determination.

C. SCADA Team Leaders

The team leaders are responsible for training the SCADA operators, usually in an informal, on-the-job manner. Bogushefsky created guidelines which were incorporated into the operating manual for the procedure for peak activated rate demand days. Since January 2005, the SCADA operators have been treated as hourly employees who are eligible for overtime pay. The team leaders, on the other hand, are salaried employees.⁹ Thus, apart from job experience, it appears that the main distinction between SCADA operators and team leaders is the provisional shift structure which ensures that the SCADA operators do not exceed forty-hour weeks. Specifically, the SCADA operators work three, 12-hour shifts and one, 4-hour shift within seven consecutive days and then have seven days off.¹⁰ In contrast, the team leaders work normal business hours, Monday through Friday, as do Spadavecchia and Pointing.

The team leaders also participate in a rotating, weekly roster of supervisors scheduled for emergencies.¹¹ Bogushefsky testified that he has served as an emergency supervisor but gave no further details regarding the frequency or regularity of this assignment. While it appears that Van Wagenen is on the emergency schedule, he has not been called out as yet. None of the SCADA operators rotate as emergency supervisors. However, the record indicates that SCADA operators occasionally "float" as temporary supervisors in the pumping, distribution and construction departments "as necessary." Bogushefsky vaguely recalled that SCADA

⁷ It appears that Berke writes the on-call schedule.

⁸ Neither the Employer nor Petitioner contends that the team leaders are managerial employees.

⁹ No evidence was elicited regarding wage differences between the team leaders and the SCADA operators.

¹⁰ This shift structure was implemented in January 2005 and will be reviewed by management prior to becoming a permanent arrangement.

¹¹ It appears that the schedule also includes managers and might include engineers who may be unit employees. The schedule was not offered in evidence.

operator Joosten "floated" for three days in the distribution department. The record fails to elaborate, however, on what functions the operators perform as temporary supervisors with respect to direction and assignment of work.¹²

Bogushefsky makes up the work schedule for the SCADA operators which he described as a routine, clerical function. While the job description claims that the four SCADA operators report to the team leaders, the record indicates that the team leaders do not evaluate or otherwise enforce company rules with respect to the SCADA operators. In that regard, all of the SCADA office employees receive incentive pay based on performance reviews completed by Spadavecchia. The incentive pay is based on achieving personal objectives that are in line with the Employer's goals. Bogushefsky testified that SCADA employees were only indirectly involved in discussions regarding the company's objectives. For the most part, his personal goals were drafted by Spadavecchia.

II. ANALYSIS

With respect to the Employer's claim that the SCADA operators should be excluded from the unit because they are supervisory, Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

It is well established that Section 2(11) of the Act must be read in the disjunctive and that an individual therefore need only possess one of these powers for there to be a finding that such status exists. *Concourse Village, Inc.*, 278 NLRB 12, 13 (1985). However, the grant of authority must encompass the use of independent judgment on behalf of management. *Hydro Conduit Corp.* 254 NLRB 433, 441 (1981). The party seeking to exclude an individual as a supervisor bears the burden of establishing that such status, in fact, exists. *Ohio Masonic Home, Inc.* 295 NLRB 390, 393 fn. 7 (1989). Mindful that a finding of a supervisory status removes an individual from the protection of the Act, the Board avoids attaching to Section 2(11) too broad a construction. *Adco Electric, Inc.*, 307 NLRB 1113, 1120 (1992), enf'd. 6 F.3d 1110 (5th Cir. 1993). The Board has noted that, in enacting Section 2(11) of the Act, Congress stressed that only persons with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677 (1985) (citing Senate Rep. No. 105, 80th Cong., 1st Sess., 4 (1947)), aff'd in relevant part 794 F.2d 527 (9th Cir. 1986). Thus, "whenever

¹² The testimony offered in this area is the following:

Q: Does it happen from time to time that when the pumping supervisor is either on vacation or not in, off-site for different reasons, that SCADA supervisors get involved and actually then assigning more tasks, not just those that SCADA want but regular pumping tasks to the pumping employees?

A: Yes.

the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

Based on the record evidence, I conclude that the evidence is insufficient to establish that the SCADA operators are supervisors as defined by Section 2(11) of the Act. No SCADA operators were called to testify regarding their duties. The record establishes that they lack the authority to hire, fire or discipline. Thus, the sole issue presented here is whether the SCADA operators exercise a degree of independent judgment to responsibly direct and assign work. Indeed, the legislative history indicates that Congress added the phrase "responsibly direct" to cover an individual who did not have traditional supervisory indicia, such as hiring, firing or disciplinary authority, but who still manages a group of employees.

The Supreme Court, in *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001)(*Kentucky River*) held that an individual who responsibly directs other employees with independent judgment within the meaning of Section 2(11) must have sole or significant authority over the work unit. In that regard, the standard for responsible direction and independent judgment includes evidence that the alleged supervisor has been delegated substantial authority to ensure that a work unit achieves management's objectives and is thus "in charge." Further, the evidence must establish that the purported supervisor is held accountable for the work of others. Finally, the evidence adduced must show that the individual exercises significant discretion and judgment in directing his or her work unit.

In the instant case, SCADA operators are charged with overseeing and maintaining a system, not a department. No record evidence supports that SCADA operators are "in charge" of field employees for personnel matters such as scheduling, time-off or evaluations. Rather, field employees report to their own pumping and distribution supervisors who have authority over them in personnel matters.

Further, no evidence was adduced to show that SCADA operators ensure that management policies and work rules are implemented or that they are held accountable for the unit workers. To the contrary, the personal objectives submitted on behalf of Keller and Bogushefsky demonstrate that the SCADA operators are primarily responsible for their own work performance, not the field employees. While it is true that SCADA operators play an important role in achieving the Employer's primary goal of providing quality water, the particular tasks of the field employees that indirectly contribute to fulfilling that goal are overseen by their departmental supervisors. SCADA operators do not discipline field employees and no evidence supports that they have input into the evaluations of field employees. Thus, the record does not support that SCADA operators can effect changes in the status of unit employees based on that employee's failure to carry out the requested task. *Northeast Utility Service Corp. v. NLRB*, 35 F.3d 621, 625 (1st Cir. 1994).

Finally, the record fails to demonstrate that SCADA operators exercise any significant discretion and judgment in directing the unit work. Instead, the operations manual sets forth established procedures for correcting errors in the system. As stated by the Supreme Court in *Kentucky River*, the "degree of judgment that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer." SCADA operators often merely follow protocols rather than use their own

thought or discretion which is not the exercise of independent judgment. *Dynamic Science Inc.*, 334 NLRB 391 (2001); *NLRB v. Meenan Oil Co.*, 139 F.3d 311 (2d Cir. 1998). In emergency situations, SCADA operators often consult with an emergency supervisor to determine what course of action to follow. While SCADA operators may make an independent decision, like authorizing the use of a construction crew for a water main break, the Board has held that such responsibilities in isolated instances that are not part of their normal job duties are insufficient to confer supervisory status. *Exxon Pipeline Co. v. NLRB*, 596 F.2d 704, 706 (5th Cir. 1979) (“the [oil movement supervisor] is little more than a night watchman, who can hardly be said to supervise the police when he calls to report and request investigation of the burglary he has just discovered.”)

In analyzing the power to assign with independent judgment, SCADA team leaders and operators do not assess the unit employee's ability or attitude. Instead, the record is clear that SCADA employees are technical troubleshooters, acting much like a quality control operation, who dispatch pre-selected pumping and distribution employees to investigate and repair equipment. While the SCADA operators use independent judgment in deciding when to make a call, there is no discretion regarding which field employee to call. Further, any discretion as to overtime assignments to unit employees by team leader Bogushefsky is constricted by the summertime rotation schedule, which attempts to equalize distribution of additional hours among the unit. *Halpak Plastics, Inc.*, 287 NLRB 700 (1987). Winter and other emergency situations appear to be *de minimis*. As to overtime assignments by the team leaders to the SCADA operators, the radical reorganization of SCADA operator shifts indicates that management has generally minimized and discouraged the use of overtime.

That the SCADA operator is highly skilled is undisputed. The exercise of independent judgment in the performance of one's own technical tasks, however, is quite different from the exercise of independent judgment in overseeing others. Accordingly, the SCADA operator's direction and assignment of tasks to unit employees does not require a sufficient exercise of independent judgment to satisfy the statutory definition. *In re Franklin Hospital Medical Center*, 337 NLRB No. 132 (2002). There is some evidence that one of the operators, like the team leaders discussed below, may have “floated” as a supervisor in various departments. However, the record does not elaborate on the frequency of such assignments or the nature of the work carried out by the “floater” supervisor. I find based upon the record that the Employer has not met its burden of proving that the SCADA operators are supervisors within the meaning of Section 2(11) of the Act.

Finally, both parties claim that the team leaders are supervisors. However, while the Employer and Petitioner take the same position, they each do so based on completely different bases. Neither party has provided the evidentiary basis to determine whether the team leaders possess primary supervisory indicia. The foregoing facts relating to the team leaders' duties and functions establish that they perform many, if not most, of the same functions as the SCADA operators. The record demonstrates that the team leaders through their years of experience train the other SCADA operators and are different from the SCADA operators only by virtue of their recently revised work schedules. Further, the record indicates that the team leaders are part of a rotating emergency supervisor roster, but the record is unclear as to the nature and the quality of the responsibilities that are exercised by those on this roster or the frequency with which team leaders have served as emergency supervisors. Similarly, while some evidence suggests that the team leaders, like the operators discussed above, have “floated” as

supervisors in various departments, the record does not elaborate on the frequency of such assignments or the nature of the work carried out by the "floater" supervisor. Therefore the record fails to establish that the team leaders are vested with supervisory authority on a "regular and substantial" basis. Accordingly, because the record is vague and insubstantial with respect to the team leaders' authority over the operators, and in the absence of a factual stipulation between the parties, neither the Employer nor the Petitioner has met the burden of proof required to establish that team leaders are supervisors.

In conclusion, the SCADA team leaders and operators are not supervisors within the meaning of Section 2(11) of the Act and constitute a separate residual unit. In this regard, neither the Employer nor Petitioner asserts that there are any other unrepresented employees eligible for the contractual unit employed by the Employer. Thus the following shall be part of the residual unit found appropriate for the purposes of collective bargaining:

Included: All full-time and regular part-time SCADA team leaders and operators employed by the Employer.

Excluded: All other employees in the contractual bargaining unit, and office clerical employees, confidential employees, executives, professional employees, and guards and supervisors as defined in the Act.

If a majority of valid ballots are cast for Petitioner, they will be taken to have indicated the employees' desire to be included in the existing contractual unit set forth below currently represented by Petitioner. If a majority of the valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented. The contractual unit is set forth as follows:

Included: All full-time and regular part-time employees, including inspectors, special inspectors, field investigators, water waste inspectors, meter service and repairmen, maintenance men, special service and maintenance men, pump operators, laborers, bookkeepers, yardmen, systems operations clerks, commercial investigators, meter readers, typist-clerks, senior clerks, and teller-counter clerks.

Excluded: All other employees, including office clerical employees, confidential employees, executives, professional employees, and guards and supervisors as defined in the Act.

DIRECTION OF ELECTION


An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time¹³ and place set forth in the notice of election¹⁴ to be issued subsequently, subject to the Board's Rules and Regulations. Eligible

¹³ Pursuant to Section 101.21 (d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this decision.

¹⁴ The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20 (c) of the Board's Rules requires that an employer notify the Regional Office at least five full working days prior to 12:01

to vote are those in the unit who were employed at the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike, who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹⁵ Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Local 363, the International Brotherhood of Electrical Workers, AFL-CIO, CLC.¹⁶

Dated at New York, New York,
May 12, 2005



Celeste J. Mattina, Regional Director,
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278

a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

¹⁵ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make a list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **May 19, 2005**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

¹⁶ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by no later than **May 26, 2005**.